

ORDINANCE OF THE HOOPA VALLEY TRIBE  
HOOPA INDIAN RESERVATION  
HOOPA, CALIFORNIA

ORDINANCE NO: 05-98

DATE APPROVED: JUNE 8, 1998

SUBJECT: APPROVAL OF THE TRIBAL ENTITIES CODE, TITLE 52 OF THE HOOPA TRIBAL CODE.

WHEREAS: The Hoopa Valley Tribe did on June 20, 1972, adopt a Constitution and Bylaws which was approved by the Commissioner of Indian Affairs on August 18, 1972, ratified by Act of Congress on October 31, 1988, and amended on June 19, 1990 and, by tribal law, the sovereign authority of the Tribe over the matter described herein is delegated to the Hoopa Valley Tribal Council, acting by law, and

WHEREAS: Article IX of the Constitution authorizes the Hoopa Valley Tribal Council to promulgate and enforce ordinances to regulate the conduct of commerce within the Tribe's jurisdiction, and

WHEREAS: The Tribal Council has identified business development and job creation as major goals for the Tribe, and that said goals are consistent with the Tribe's priorities of maintaining a strong, self-governing and stable society.

NOW THEREFORE BE IT RESOLVED: The Hoopa Valley Tribal Council hereby enacts the Tribal Entities Code as Title 52 of the Hoopa Tribal Code.

TITLE 52 -- TRIBAL ENTITIES CODE

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**TITLE 52 -- TRIBAL ENTITIES CODEPART I. GENERAL PROVISIONS.**

52.101. Scope.

The provisions of this Title shall apply to each tribal entity formed under the laws and sovereign powers of the Tribe, whether before or after the passage of this Title. The provisions of the Tribal Comprehensive Business Codes apply to tribal entities operating pursuant to this Code where not inconsistent with the provisions contained herein.

#### 52.102. Purpose and Construction.

(a) The purposes of this Title are:

- (1) to establish a uniform system of creation and regulation of tribal entities for both economic and governmental purposes;
- (2) to preserve the sovereign immunity and protect the credit of the Tribe;
- (3) to address the status of Tribal sovereign immunity with respect to tribal entities, as required by economic and governmental necessity;
- (4) to provide for insulation of tribal economic entities from shifts of policy of tribal politics;
- (5) to provide stability and increase the stature of tribal entities in the commercial world; and
- (6) to ensure that tribal entities comply with tribal law.

(b) The provisions of this Title shall be liberally construed and applied to promote its underlying purposes and policies.

#### 52.103. Definitions.

The following terms, whenever used or referred to in this Title, shall have the following respective meanings, unless different meanings clearly appear from the context:

(a) "Charter" means the charter of a tribal entity, and includes approved articles of incorporation.

(b) "Tribal entity" includes any cooperative formed by the Tribal Council pursuant to the authority of the Tribal Constitution and Bylaws for economic or governmental purposes and any entity which is controlled by the Tribal Council. For the purposes of this Title, an entity shall be deemed to be controlled by the Tribal Council if the majority of its Directors are chosen, selected or appointed by the Tribal Council. Entities governed by this Title include, but are not limited to, organizations entitled "authority", "enterprise", "corporation", "agency", "commission", or terms of like import, as deemed necessary by the Tribal Council, provided, however, that general committees, programs, departments, projects, of the Tribal Council shall not be deemed "tribal entities" for the purposes of this Title.

#### 52.104. Status of a Tribal Entity.

(a) For purposes of taxation, regulatory jurisdiction and civil jurisdiction, a tribal entity created pursuant to the sovereign powers of the Tribe shall be deemed to be a subordinate arm of the government of the Tribe and shall be entitled to all of the privileges and immunities of the Tribe.

(b) The Tribal Court shall have jurisdiction to decide all questions with respect to the status of a tribal entity formed pursuant to the sovereign powers of the Tribe.

#### 52.105. Preexisting Tribal Entities.

A tribal entity preexisting passage of this Title shall continue to exist and to perform its several functions.

## 52.106. Sovereign Immunity and Waiver.

### (a) Sovereign Immunity of Tribal Entity.

A tribal entity is clothed by federal law with all the privileges and immunities of the Tribe, except as specifically limited by the tribal entity charter, including sovereign immunity from suit in any state, federal or tribal court. Nothing in this Title shall be deemed or construed to be a waiver of sovereign immunity of a tribal entity from suit or to be a consent of the tribal entity or the Tribe, to the jurisdiction of the United States or of any state with regard to the business or affairs of the tribal entity or to any cause of action, case or controversy, except as provided herein.

### (b) Waiver of Sovereign Immunity of the Tribal Entity.

Sovereign immunity of the tribal entity may be waived only by express resolution of the Tribal Council. Waivers of sovereign immunity are disfavored and shall be granted only when necessary to secure a substantial advantage or benefit to the tribal entity. Waivers of sovereign immunity shall not be general but shall be specific and limited as to duration, grantee, transaction, property or funds, if any, of the tribal entity subject thereto. Neither the power to sue and be sued provided in the charter of the tribal entity, nor any express waiver of sovereign immunity by resolution of the Tribal Council shall be deemed a consent to the levy of any judgement, lien or attachment upon any property of the tribal entity other than property specifically pledged or assigned, or any property of the Tribe, or a consent to suit in respect

to any land within the exterior boundaries of the Reservation or consent to the alienation, attachment or encumbrance of any such land.

### (c) Sovereign Immunity of the Tribe.

All inherent sovereign rights of the Tribe as a federally-recognized Indian tribe with respect to the existence of the tribal entity are hereby expressly reserved, including sovereign immunity from suit in any state, federal or tribal court. Nothing in a tribal entity charter shall be deemed or construed to be a waiver of sovereign immunity from suit of the Tribe or to be a consent of the Tribe to the jurisdiction of the United States or of any state with regard to the business affairs of the tribal entity or the Tribe or any cause of action, case or controversy, except as provided herein.

### (d) Credit of the Tribe.

Nothing in a tribal entity charter, not any activity of any tribal entity, shall implicate or in any way involve the credit of the Tribe.

### (e) Inclusion in Charter.

The provisions of subsections (a)-(d) of this Section shall be included in the charter of each tribal entity by effect of this Title.

## 52.107. Assets of a Tribal Entity.

A tribal entity shall have only those assets of the Tribe formally assigned to it by the Tribal Council, together with whatever assets it acquires from other sources. No activity of a tribal entity nor any indebtedness incurred by it shall implicate or in any way involve any assets of Tribal members or the Tribe not assigned in writing to the tribal entity.

## PART II. CREATION AND REGULATION OF A TRIBAL ENTITY.

### 52.108. Tribal Entity Charter.

The charter for a tribal entity formed under this Title shall set forth:

- (1) The name of the tribal entity.
  - (2) The purposes for which the tribal entity is organized.
  - (3) Provisions for establishment of a governing body and determining membership thereof, if applicable.
  - (4) The powers of the tribal entity.
  - (5) The provisions of Section 52.106 providing for sovereign immunity and waivers thereof.
  - (6) Provisions and bylaws directing management of the tribal entity and regulation of its affairs.
  - (7) Provisions designed to insulate the tribal entity from shift of tribal politics.
  - (8) Provisions, if any, describing the tribal entity's use of the tribal attorneys or other attorneys approved by the Tribal Council.
- If applicable, a compensation and administrative schedule for determining how administrative support and compensation will be distributed for Dual-Purpose Governmental/Business Entities, as provided in section 52.109.

### 52.109. Dual-Purpose Governmental/Business Entities, Election to Have No Board of Directors.

- Any department or programs of the Tribe may establish for-profit business divisions within their department or program, if approved by the Tribal Council. When approved, such department or program must develop for Tribal Council approval a Charter, as prescribed in 52.108, for the for-profit division.
- The tribal entity established pursuant to 52.109(a) may propose for Tribal Council approval that the for-profit division not have a board of directors for the entity. In such situation, the charter shall describe the governing structure of the entity in lieu of the board of directors.

### 52.110. Delegation of Essential Governmental Functions of Tribal Entities.

For purposes of allowing a tribal entity to utilize the provisions of the Indian Tribal Governments Tax Status Act of 1982, as amended, the Tribal Council may delegate one or more essential governmental functions to the tribal entity, provided, however, that exercise of any such power shall be subject to periodic review by the Tribal Council.

#### 52.111. Liability of Members of Governing Body of Tribal Entities.

No member of the governing body or officers of any tribal entity formed pursuant to the sovereign powers of the Tribe shall be liable to any creditor of the tribal entity by reason of his or her status or service as a member or officer, or by reason of acts done in the course of his or her official duties.

#### 52.112. Disposition of Assets.

Upon dissolution of a tribal entity, its assets shall be distributed at the direction of the Tribal Council, or its designee, as follow:

- (a) Any property held upon an express condition requiring its return, transfer or other disposition shall be distributed accordingly;
- (b) Any property or assets required to be distributed or transferred in any manner according to federal law shall be distributed or transferred accordingly;
- (c) Claims of creditors of the tribal entity approved by the Tribal Council shall be paid accordingly from the assets or funds of the entity; and
- (d) Remaining assets shall be transferred to another tribal entity, to the Tribe, or distributed or transferred as the Tribal Council directs.

#### 52.113. Amendment of Tribal Entity Charter.

Any tribal entity charter formed under the laws and sovereign power of the Tribe may be amended only by the Tribal Council.

### PART III. FACILITATION OF BUSINESS OPPORTUNITIES.

#### 52.114. Authority to Enter Into Partnerships.

- (a) A tribal entity shall have such authority to entering into partnerships with private and public persons, corporations, entities and agencies that are beneficial to carrying out the purposes of the Tribal entity.
- (b) Partnerships entered into pursuant to this section shall be governed in accordance with the terms contained in written agreements, and as defined by applicable business codes, and by regulations and laws of the Tribe.

#### 52.115. Multiple-year and Long Term Leases and Permits For Tribal Entities.

- (a) In order to facilitate the creation and maintenance of business and employment opportunities for tribal entities, the Tribe, Tribal members and Reservation residents, the Tribal Council may issue multiple-year and long term leases and permits for use of tribal financial and natural resources, property, or may enter into other agreements with tribal entities as provided by tribal laws and regulations.
- (b) The contents of leases and permits issued pursuant to this section shall include provisions for:
  - (i) The date by which the resource will become available;
  - (ii) For permits and leases for resources that require annual quantities, the date each year by which such quantities will become available;

(iii) The total volume of resources covered by the lease or permit by total or annual amounts;

(iv) If applicable, the price of the resource covered by the lease and permit (taking into consideration the employment in lieu of taxing policy); and

(v) Applicable environmental considerations that may be made part of the lease or permit.

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## PART IV. SEVERABILITY.

## 52.116. Severability.

In the event that any provision of this Title is found or declared to be invalid, the remaining provisions of this Title shall be unaffected thereby, and shall remain in full force and effect.

## C E R T I F I C A T I O N

I, the undersigned, as Chairman of the Hoopa Valley Tribal Council do hereby certify that the Hoopa Valley Tribal Council, composed of eight members, of which five were present constituting a quorum at a regular meeting thereof; duly and regularly called, noticed, and convened, and held this eighth day of June, 1998; and that this Ordinance was duly adopted by a vote of four for and none against, and that said ordinance has not been rescinded or amended in any way.

DATED THIS EIGHTH DAY OF JUNE, 1998.

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MERV GEORGE, JR., CHAIRMAN

HOOPA VALLEY TRIBAL COUNCIL

ATTEST: \_\_\_\_\_

DARCY BALDY, EXECUTIVE SECRETARY

HOOPA VALLEY TRIBAL COUNCIL

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